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> "Equal justice under law is not just a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status."
>
> – U.S. Supreme Court Justice Lewis Powell, Jr., 1965.[1]

Introduction

Imagine that you are playing blackjack in a Las Vegas casino. The dealer explains the rules—there are two decks of cards, dealer shuffles, and the closest to twenty-one without going over wins. You play and win the first round. Beginner's luck. You play again; you win again. The others at the table coerce the dealer to add a new house rule. You can't use aces, while everyone else can. You still win your fair share of rounds. The others force the dealer to add more rules: you may not "double down," and you must discard all face cards. Nonetheless, you still win your fair share. Eventually, the dealer imposes so many rules against you that the only card worth anything to you is the two of hearts. Sound fair?

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1. As quoted in the REPORT OF THE PENNSYLVANIA BAR ASSOCIATION TASK FORCE FOR LEGAL SERVICES 3 (Dec. 1990)).

Of course not. Yet this is essentially what Congress has done to legal aid attorneys working on behalf of the poor.

Since 1996, Congress has imposed substantial restrictions on lawyers funded by the Legal Services Corporation (LSC).[2] These restrictions include banning LSC-funded attorneys from filing class action lawsuits, prohibiting them from claiming any statutory right to attorneys' fees, and barring them from bringing any challenges to an agency's rule-making authority.[3] Aside from imposing restrictions, to which the courts have largely acquiesced, Congress has also slashed the LSC budget by a third.[4] The result? Denying the poor access to justice.

According to the last study on the legal needs of the poor, commissioned by the American Bar Association in 1994, approximately eighty percent of the civil legal needs of the poor are unmet.[5] Even Justice Sandra Day O'Connor, a relatively conservative justice of the current Supreme Court, admits, "there has probably never been a wider gulf between the need for legal services and the availability of legal services."[6] This is unlikely to change, particularly because the legal profession has become more tolerant of a system in which money matters more than due process and equal protection.[7] Gone are the mythical days of Atticus Finch,[8] a lawyer-statesman who dispensed his advice as needed, without discrimination as to a client's income or social status. Money was supposed to be an afterthought. Rather, the profession preferred to enamor itself with the responsibility of being the torch-bearers of the law.[9] For better or worse, that sentiment has changed. Despite LSC opponents' claiming that pro bono representation and contingency fee arrangements will satisfy the legal needs of the poor,[10] all

2. *See generally* 45 C.F.R. § 1600-43 (2001).

3. *Id.*

4. *See* Mary Wisniewski Holden, *Clipped Wings and Budget Cuts Tax Legal Aid*, CHI. LAW., Aug. 1997, at 1; *see also* Suggested List of Priorities for LSC Recipients, 61 Fed. Reg. 26,934 (May 29, 1996); Indira A.R. Lakshmanan, *Budget Cuts Legal Aid to Poor*, BOSTON GLOBE, Apr. 27, 1996, at 3.

5. ROBERT A. KATZMANN, *Themes in Context, in* THE LAW FIRM AND THE PUBLIC GOOD 1, 2 (Robert A. Katzmann ed., 1995).

6. *Id.* (quoting United States Supreme Court Justice Sandra Day O'Connor's remarks at the Pro Bono Awards Assembly Luncheon of the American Bar Association on August 12, 1991).

7. Lisa G. Lerman, *Blue Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 GEO. J. LEGAL ETHICS 205, 219 (1999) (discussing the legal profession's preoccupation with profit and the rising dominance of income generation).

8. HARPER LEE, TO KILL A MOCKINGBIRD (Harper Collins 1999) (1960).

9. *See generally* ANTHONY T. KRONMAN, THE LOST LAWYER 294 (1993).

10. *The Future of the Legal Services Corporation: Examining a Wide Variety of Views on the Legal Services Corporation and To Try To Determine Whether or Not To Reauthorize Funding for Legal Services, Reform the Organization, Block Grant the Money to States, or Eliminate*

indications point toward the profession's continued devotion to profit-maximization while neglecting potential low-income clients. Thus, the rift between the poor's theoretical rights to justice and their operative rights to judicial remedies has widened.[11]

Rather than engage in a politically futile discussion on why the LSC restrictions should be lifted, or hopelessly and unrealistically call upon the private bar to consider equal access over profits, this paper argues for a more attainable aspiration: instituting incremental changes in the nonprofit legal services funding strategy. Part I offers a history of the LSC and explains how it is currently regulated and financed. Part II explores alternative funding strategies for states and public interest firms seeking to fill gaps gouged by the LSC restrictions, generally focusing on California.[12] Part III concludes with an observation that by focusing on these piecemeal changes in fundraising, legal aid attorneys inevitably empower themselves to move away from the inefficiencies of achieving social change through litigation, and into a more holistic (recognizing that providing access to justice is merely one of many tools to combat poverty) and collaborative (working with all lawyers, not just legal aid attorneys, as well as other professionals) vision of lawyering for the poor.

I. The Evolution of the Legal Services Corporation

As defined by the Legal Services Corporation Act of 1974, the mission of the LSC is "to promote equal access to the system of justice and improve opportunities for low-income people throughout the United States by making grants for the provision of . . . civil legal assistance to those . . . unable to afford legal counsel."[13] The objective is equally ambitious: to reaffirm the faith of the poor in the rule of law and provide representation of the "highest quality" to "serve best the ends of justice."[14]

The LSC rhetoric stems from its roots in President Lyndon B.

Federal Involvement in Providing Legal Services to the Poor Before the Senate Comm. on Labor and Human Resources, 104th Cong. 95 (1995) (prepared statement of William Mellor, President and General Counsel, Institute of Justice) [hereinafter *The Future of the Legal Services Corporation*].

11. James Regan, Note, *How About a Firm Where People Actually Want to Work?: A "Professional" Law Firm for the Twenty-First Century*, 69 FORDHAM L. REV. 2693, 2708 (2001).

12. The author is a member of the California State Bar. Although many of the examples in this section focus on California, they are provided to illustrate general nationwide trends.

13. LEGAL SERVS. CORP., MISSION STATEMENT, *at* http://www.lsc.gov/welcome/wel_what.htm (last visited Sept. 16, 2004).

14. 42 U.S.C. § 2996(2)-(3) (2002).

Johnson's War on Poverty programs.[15] Prior to the LSC, the Office of Economic Opportunity (OEO) was established pursuant to the Economic Opportunity Act of 1964.[16] The OEO, among other things, was the predecessor to the LSC, and marked the first time the federal government committed itself to funding legal aid programs.[17] The OEO adopted a highly proactive agenda, initiating high-profile impact litigation,[18] organizing groups of poor people, and involving them in the OEO administration.[19] OEO's priorities included outreach efforts, community education, and a "physical presence in the community in order to identify what the critical needs are for that community and fashioning a legal response to it."[20]

Perhaps the OEO did its job too well.[21] In 1973, President Richard M. Nixon dismantled the OEO Legal Services Program after years of partisan bickering over the ostensibly radical mission of the OEO.[22] Democrats in Congress responded with the LSC Act of 1974.[23] As with most congressional creations, the Act represented a compromise of interests—those on the left who wanted LSC recipients to be professionally and politically independent, and those on the right who sought to prevent the LSC from becoming a vehicle for social reform or political action by limiting its independence.[24]

As such, the Act formed a private, nonprofit corporation to perform similar grant-making duties formerly handled by the

15. *See* Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 STAN. L. REV. 1189, 1272-78 (1986) (describing President Johnson's War on Poverty programs).

16. Pub. L. No. 88-452, 78 Stat. 508 (1964) (repealed 1981).

17. Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 437 (1998).

18. Impact litigation is "litigation oriented toward the change of institutional norms or practices, rather than the resolution of individual problems." Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 535 n.1 (1987-88).

19. JACK KATZ, POOR PEOPLE'S LAWYERS IN TRANSITION 75-89 (1982) (discussing the impact of the OEO program on legal services for the poor in Chicago).

20. OFFICE OF ECON. OPPORTUNITY, GUIDELINES FOR LEGAL SERVICES PROGRAMS (1967).

21. Interestingly enough, the first director of the OEO under Nixon was none other than Donald Rumsfeld, who became a surprisingly strong advocate of its legal services for the poor program. James Mann, *Young Rumsfeld*, THE ATLANTIC MONTHLY, Nov. 2003, at 98-99.

22. Warren E. George, *Development of the Legal Services Corporation*, 61 CORNELL L. REV. 681, 694-95 (1976).

23. Pub. L. No. 93-355, 88 Stat. 378 (codified as amended at 42 U.S.C. § 2996 (2003)).

24. *See* Gary Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337, 337-38 (1980) (noting that some members of Congress were concerned that the OEO, in the span of five years, increased the number of legal aid attorneys from 600 to 2500 and increased total legal aid expenditures from $4 million to $60 million).

defunct OEO.[25] Its bylaws require bipartisanship: no more than six board members may be from the same political party.[26] The eleven members of the LSC Board of Directors are appointed by the President and confirmed by the Senate, and funds for its operation are appropriated by Congress.[27] Currently, hundreds of local programs are funded by the LSC, with funds distributed on a competitive basis to local legal aid offices.[28] All grantees are required to maintain certain standards and follow applicable restrictions.[29] Initially, these restrictions prohibited involvement in criminal proceedings, abortion rights, political activity, school desegregation, public demonstrations, picketing, boycotts, strikes, or organizing workers.[30] The restrictions ensured that LSC funds were used to provide "direct" legal services rather than for "impact" litigation.[31] However, as the LSC expanded its programs in the 1970s, and as civil rights legislation granted private parties additional civil remedies, advocacy efforts reverted back to impact-oriented litigation.[32]

In the 1980s, the Reagan Administration sought to eliminate the LSC program entirely.[33] In 1981, as a result of this political hostility, funding was cut from $321 million to $241 million.[34] LSC regulations extended the restrictions to prohibit legal aid attorneys from being involved in redistricting suits.[35]

The mid-1990s brought about another wave of attacks against the LSC. Congress cut funding by one-third and imposed even more restrictions on the type of work LSC recipients could carry out.[36] In 1996, the LSC budget was slashed from $400 million to $278 million.[37] This, in turn, forced neighborhood legal services to

25. 42 U.S.C. § 2996 (2003).

26. *Id.* § 2996c; *see also* § 2996(5).

27. § 2996c.

28. LEGAL SERVS. CORP., WELCOME TO LEGAL SERVICES, *at* http://www.lsc.gov/welcome/wel_mes.htm (last visited Dec. 28, 2004).

29. George, *supra* note 22, at 700-09 (discussing the structure and significance of the Act).

30. *Id.*

31. Alan W. Houseman, *A Short Review of Past Poverty Law Advocacy*, 23 CLEARINGHOUSE REV. 1514, 1520 (1990).

32. *Id.*

33. DOUGLAS J. BESHAROV, *Introduction* to LEGAL SERVICES FOR THE POOR: TIME FOR REFORM, at xiii (Douglas J. Besharov ed., 1990).

34. *Id.*

35. *Id.*; *see also* 45 C.F.R. § 1632.3 (2004).

36. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (codified as amended at 42 U.S.C. § 2996 (2003)); Lakshmanan, *supra* note 4.

37. *Id.*

either close theirs doors or reduce staff.[38] Even more detrimental than the budget cuts were the substantive restrictions levied on remaining legal aid staff attorneys. These restrictions included the following:

- Prohibited involvement in class action lawsuits, including filing amicus briefs on behalf of clients.[39] Thus, a lawyer who saves one baby from lead paint cannot save several hundred more without filing numerous identical cases. This creates an untenable result: a lawyer is unable to tackle pervasive and systemic harms on behalf of her clients, which renders her unable to fulfill her professional responsibility to her clients.
- Forbade LSC recipients from providing legal services to certain immigrants who are parolees, family members of amnesty aliens, persons with Temporary Protected Status, and undocumented aliens.[40] This was the main attack point for conservatives in the newly Republican-majority 104th Congress. Lobbyists sent wave after wave of complaints from private, individual farmers to testify about their business losses resulting from migrant farm workers who litigated for back wages.[41] Ultimately, the farmers and their lobbyists convinced members of Congress that appropriating funds to be used by noncitizens against a sizeable voting constituency verged on political suicide. Of course, the lobbyists' less sympathetic clients were pleased as well.[42] The only exception: legal aid lawyers may represent undocumented immigrants in domestic abuse cases, but only if they use non-LSC funds.[43]
- Barred participants from accepting court-awarded attorneys' fees, even if the right to claim fees would be the client's best source of leverage.[44] This prohibition is especially hurtful in Title VII cases where the fee is used

38. Telephone interview with Ramon Arias, Executive Director, Bay Area Legal Aid (Apr. 24, 2002). Arias was also the director of the now-defunct San Francisco Neighborhood Legal Assistance Foundation, which consolidated with other Bay Area legal services as mandated by the LSC guidelines. The forced consolidation constituted a twenty-five percent reduction in staff and required closure of the Solano and Yolo County legal aid offices.

39. 41 C.F.R. § 1617.2-.3 (2004).

40. 45 C.F.R. § 1626.5 (2004).

41. See *The Future of the Legal Services Corporation, supra* note 10, at 60-77 (statements of Robert DeBruyn, President, DeBruyn Produce Company and Dean R. Kleckner, President, American Farm Bureau Federation).

42. *See* Grover Norquist, *Defunding the Left*, AM. SPECTATOR, Sept. 1995, at 56.

43. Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45755 (1997) (codified as amended at 45 C.F.R. § 1626.4 (2004)).

44. 45 C.F.R. § 1609.3 (2004).

as an incentive to attract quality representation. Now, a client is virtually precluded from using legal aid attorneys and is left to choose among the private plaintiffs lawyers, who inevitably temper their client's interests with their own business interests. Imagine the difficulty a client would encounter in seeking representation if she sought mainly injunctive or declaratory relief in a discrimination case where monetary damages were small. She still may choose to use a legal aid attorney, but as there is no opportunity to recover fees, doing so would give the defendant more leverage and little incentive to settle.[45]

- Forbade participation in administrative rule-making proceedings on behalf of their clients.[46] Legislators and policymakers are now free to fashion welfare programs without input from the poor. Ironically, this restriction was imposed pursuant to the 104th Congress' *Contract with America* agenda,[47] which subsequently left all fifty states to implement welfare reform[48] *without* the input from the very people those programs seek to assist.
- Prohibited solicitation of clients.[49] This may seem fair in an effort to prevent undue influence and intimidation on the part of an overly aggressive attorney.[50] However, it wholly proscribes a lawyer from attempting outreach efforts when a lawyer discovers that a pervasive injustice is going on in their neighborhood. The lawyer must unrealistically wait for the individual client who suffered harm to materialize in her office.

Not only do these restrictions limit the use of LSC money, they also restrict use of non-LSC funds.[51] Whereas an LSC recipient was previously permitted to use non-LSC funds for any purpose, so long as segregation of those funds was well-documented, the new regulations forbid any agency receiving LSC funds from engaging in restricted activities.

It is also worth noting that but for a relatively recent Supreme Court decision striking the restriction as unconstitutional, the LSC recipient was prohibited from challenging the constitutionality of a

45. *See* 42 U.S.C. § 1988 (2004) (allowing awards of attorney's fees in actions to vindicate civil rights).

46. 45 C.F.R. § 1612 (2004).

47. *See* REPUBLICAN CONTRACT WITH AMERICA (1994), *available at* http://www.house.gov/house/Contract/CONTRACT.html (last visited Dec. 28, 2004).

48. *See* Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2157 (codified as amended at 42 U.S.C. § 614-15 (2004)).

49. 45 C.F.R. § 1638.1 (2004).

50. *See* MODEL RULES OF PROF'L CONDUCT R. 7.1-7.3 (2002).

51. 45 C.F.R. § 1610.1 (2004).

state or federal welfare statute.[52] Had the Court upheld that restriction, the consequences would have resulted in a Catch-22—a legal aid attorney would be prohibited from representing a client *because* the client's case was meritorious or forced to withdraw if the client wished to raise constitutional defenses.

The experience of David Udell, a former attorney with Legal Assistance for the Elderly in New York City, illustrates the administrative quagmire through which an LSC-funded lawyer must wade.[53] Udell was lead counsel for four class action lawsuits in 1996.[54] When the restrictions were placed into effect, Udell was barred from "initiating or participating in a class action."[55] The merits of those cases, however, were resolved earlier, and Udell was merely monitoring the implementation of final remedial orders.[56] Each case sought, in different respects, a change in the Social Security Administration's "nonacquiescence" policy of disregarding Second Circuit holdings.[57] Udell was told, when the restrictions came into effect, that his office must discontinue all involvement in the four class actions.[58] However, Udell believed that monitoring a class action consent order was a "nonadverserial" role permitted by the LSC regulations.[59] The LSC agreed, but later retracted when the defense counsel reported to the LSC that Udell was engaging in an "adversarial" role.[60] During the course of monitoring, Udell informed the court that the defendant may have violated the settlement,[61] which the LSC believed triggered an "adversarial" role.[62] In the end, the court intervened on Udell's behalf against the LSC, insisting that monitoring consent decrees does not create an

52. Velazquez v. Legal Servs. Corp., 531 U.S. 533 (2001) (holding that prohibiting an LSC recipient from raising constitutional challenges to a state or federal welfare statute or regulation violated the First Amendment by regulating private speech and insulating federal law from judicial challenge).

53. Telephone interview with David S. Udell, Deputy Director, Brennan Center for Justice at New York University School of Law (Apr. 29, 2002); *see also* David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia, and Oregon Describe the Costs*, 17 YALE L. & POL'Y REV. 337 (1998). Udell's salary, by the way, was funded entirely by a New York state program supporting advocacy on behalf of Social Security claimants. Yet, as mentioned above, his activities were still subject to LSC scrutiny.

54. New York v. Sullivan, 906 F.2d 910 (2d Cir. 1990); Stieberger v. Apfel, 57 Soc. Sec. Rep. Serv. 690 (S.D.N.Y. 1998); Robinson v. Chater, 1996 WL 5067 (S.D.N.Y. 1996); Kendrick v. Sullivan, 784 F. Supp. 94 (S.D.N.Y. 1992) (certifying class and denying motion to dismiss).

55. 45 C.F.R. § 1617.3 (2004).

56. Udell, *supra* note 53, at 340-45.

57. *Id.* at 340.

58. *Id.* at 341.

59. *Id.*

60. *Id.* at 342.

61. *Id.*

62. *Id.*

actual adversarial dispute.[63] However, each time Udell reported a discrepancy to the court, the merry-go-round continued. The defense would notify the LSC, the LSC would issue a cease-and-desist letter and threaten to pull its funding, the parties would go to court, and the court would decide whether or not his lawyering was "adversarial."[64] Eventually, perhaps weary of the constant threats to his organization's funding, Udell's supervisors pressured him to withdraw from the case or leave the office.[65] He chose the latter.[66]

David Udell's story is not uncommon. In fact, many organizations have turned down LSC funds since 1996, relying instead on interest on state lawyers' trust account (IOLTA) and other grants,[67] as well as private donations. Greater Boston Legal Services (GBLS), which was once the primary LSC recipient in New England, decided to rely instead on private-sector donations and state grants.[68] They were forced to cut staff, but built a relationship with Harvard Law School's clinical program to keep their inner-city clinics staffed.[69] In Virginia, long-time LSC recipient Charlottesville-Albemarle Legal Aid Society (CALAS) declined LSC funds and entered into an arrangement where the old CALAS staff formed another organization, Piedmont Legal Services, which received LSC funds—thus becoming subject to LSC restrictions.[70] Though CALAS and Piedmont shared the same board of directors, they are physically and financially separate organizations. This enables CALAS to operate without restrictions, providing services that Piedmont is restricted from performing, while maintaining a close working relationship with Piedmont.[71] CALAS relies exclusively on

63. *Id.* at 342-43.

64. *Id.*

65. Telephone interview with David S. Udell, *supra* note 53.

66. *Id.*

67. Generally, under state IOLTA programs, an attorney who receives insignificant client funds must deposit them in a separate, interest-bearing bank account. The interest income accrued from the accumulation of client funds is then used to finance legal services for the poor. This program has come under challenge as violating the Takings Clause of the Constitution. The Supreme Court has recently upheld the concept of IOLTA accounts in *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003). The Court noted that IOLTA funds did not constitute a taking because plaintiffs suffered no pecuniary loss while the funds generated $200 million to help finance civil legal aid in 2001. *Id.* at 222, 237-38. *But cf.* Phillips v. Wash. Legal Found., 524 U.S. 156, 172 (1998) (holding that under Texas law, any interest income generated by IOLTA accounts is the property of the owner of the principal but declining to consider whether the IOLTA program constituted a taking).

68. Wheatly Aycock, *Divide and Conquer: How Poverty Lawyers Are Overcoming Curbs on Federal Funds*, LEGAL TIMES, Jan. 7, 2002, at 1.

69. *Id.*

70. Udell, *supra* note 53, at 350.

71. *Id.*

private donations and IOLTA grants.[72]

In order to free themselves of LSC restrictions, both GBLS and CALAS had to face budget realities and significantly cut back their programs. In so doing, these organizations altered their roles from being the most prominent major regional providers of legal services to the poor to becoming less dominant, but equally important, providers in terms of number of clients served.[73]

It remains to be seen whether groups like CALAS and GBLS can survive and maintain their programs with their current arrangements with Piedmont and Harvard Law School, respectively. But to many LSC recipients who cannot afford to create a new entity like Piedmont, or cannot find a partner like Harvard Law School, the CALAS/GBLS model is simply not an alternative.

Many organizations face the Hobson's choice of accepting LSC funds—thereby serving their clients solely on LSC's terms—or eschewing LSC funds and gaining flexibility—a seemingly existential risk. By pursuing diversified funding strategies, these organizations seek to gain access to the funds necessary to accomplish missions, while ensuring their long-term survival.

II. Alternative Funding Strategies for States and Nonprofit Legal Services

> "Something must be devised by which everyone, however lowly and however poor, however unable by his means to employ a lawyer and to pay court cost, shall be furnished the opportunity to set the fixed machinery of justice going."
>
> – U.S. Supreme Court Chief Justice William Howard Taft, 1926.[74]

72. *Id.* at 354.

73. In this sense, they have become more like the Volunteer Legal Services Program's Homeless Advocacy Project (HAP). *See infra* Part III. Located in San Francisco, HAP does not receive a single penny from LSC coffers, despite having an identical mission statement. HAP relies on a diverse pool of city and county grants, State Bar IOLTA grants, private donations and foundation grants, and in-kind gifts (e.g., computers, fax machines, office furniture, and other items donated by private firms). Nevertheless, HAP's budget dictates that operations remain small, forcing the organization to turn away more clients than they serve. It should, however, be noted that HAP is not qualified to receive LSC funds because it is not a 501(c)3 organization; rather, it is a project of the Volunteer Legal Services Program, which is sponsored in part by the Bar Association of San Francisco. Interview with Teresa Friend, Managing Attorney, Homeless Advocacy Project, in San Francisco, Cal. (Apr. 11, 2002).

74. William Howard Taft, *Preface* to REGINALD HEBER SMITH & JOHN SAEGER BRADWAY, GROWTH OF LEGAL AID WORK IN THE UNITED STATES (Nat'l Bureau of Labor Statistics, Bulletin No. 398, 1926).

Given the federal cutbacks and restrictions, the search for alternative funding sources for legal services becomes even more crucial. Organizations seek funds from the public, private, and nonprofit sectors. Potential sources range widely, from possible large fluid recovery trust funds, to small in-kind gifts from churches.

1. Class Action Residuals—The *Cy Pres* Doctrine[75]

Unclaimed class action awards are often put into a fluid recovery trust fund, which in theory is used to further the interests of the class.[76] Most cases using fluid recovery involve antitrust and consumer protection, but the principles governing this type of distribution apply equally in other areas of the law, such as civil rights. *Cy pres* is used where class members cannot be identified, or where a large number of people have suffered small monetary losses.[77] In such cases, outright grants to public interest organizations are made to ensure that the defendant does not enjoy a windfall as a result of its own illegal conduct.[78]

In California, the fluid recovery doctrine is firmly grounded in both state case law and statutory authority.[79] For example, in awarding over four million dollars to the plaintiffs in a class action suit against the Levi Strauss Company, a court established a consumer protection foundation that would administer the fund and engage in consumer protection projects, including research and litigation.[80] Section 384 of the California Code of Civil Procedure specifies that money from such a fund shall be paid in any manner consistent with the objectives and purposes of the underlying cause of action.[81]

Federal courts have also validated the use of fluid recovery trust funds. The Ninth Circuit has held that a trial court's choice among distribution options "should be guided by the objectives of the underlying statute and the interests of the silent class

75. The term "cy pres" is derived from the Norman French expression *cy pres comme possible*, which means "as near as possible." *See* EDITH L. FISCH, THE CY PRES DOCTRINE IN THE UNITED STATES 1 (1950).

76. Fluid recovery is also known as "cy pres" distribution, because it is a means of distributing funds to their next best use.

77. *See generally* State of California v. Levi Strauss & Co., 715 P.2d 564 (1986) (discussing acceptable forms of fluid recovery).

78. *Id.*

79. *See* Bruno v. Sup. Ct., 179 Cal. Rptr. 342, 343 (Cal. Ct. App. 1981) (explaining in *dicta* the purpose of fluid recovery); CAL. CIV. PROC. CODE § 384 (2002).

80. *Levi Strauss & Co.*, 715 P.2d at 567.

81. CAL. CIV. PROC. CODE § 384.

members."[82] In many instances, courts have concluded that legal organizations and law school clinics are the next best alternative for unclaimed funds.[83] One court even held a hearing where various organizations submitted grant applications for the *cy pres* funds.[84]

Even though LSC recipients are barred from any "adversarial" role in class action litigation, such organizations may still be recipients of fluid recovery grants in cases brought by private litigants not subject to LSC restrictions. For example, a legal aid office may look to boost its funding for its eviction defense practice by developing a partnership with non-LSC housing rights groups involved in class- or representative-actions where fluid recovery may be a distinct possibility.[85] As case law points out, the fund need not be narrow in scope or geographically limited, so long as the fund is consistent with the underlying statute it seeks to enforce.[86]

The Impact Fund, a nonprofit foundation in Berkeley, California, highlights the strengths and drawbacks of this funding scheme. The Impact Fund actively seeks *cy pres* awards as a revenue stream. Indeed, since its inception in 1992, the Impact Fund has relied extensively on private foundations, individual contributions, and *cy pres* awards.[87] It distributes $200,000 annually in grants to small civil rights firms lacking the resources to adequately represent their clients.[88]

Besides performing grant-making functions, the Impact Fund staff also serves as legal counsel, filing amicus briefs for its grantees or taking on its own cases.[89] Its major case to date is serving as lead counsel in a gender discrimination suit against Wal-Mart.[90] In the

82. Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1307 (9th Cir. 1990).

83. *In re* Folding Carton Litig., 934 F.2d 323 (7th Cir. 1991) (awarding over $2 million to National Association for Public Interest Law); Jones v. Nat'l Distillers, 56 F. Supp. 2d 355 (S.D.N.Y. 1999) (allowing distribution to Legal Aid Society Civil Division despite thin ties to purpose of litigation fund); *In re* Wells Fargo Sec. Litig., 991 F. Supp. 1193 (N.D. Cal. 1998) (approving distribution to law school securities program instead of bar association); Drennan v. Van Ru Credit Corp., 1997 U.S. Dist. LEXIS 7776 (N.D. Ill. 1997) (approving distribution to Mid-Minnesota Legal Assistance Foundation).

84. Superior Beverage Co. v. Owens Ill., 827 F. Supp. 477 (N.D. Ill. 1993) (distributing the $2 million ultimately to fourteen nonprofit groups, including legal organizations, law schools, and an art museum).

85. The final distribution of the funds is at the discretion of the judge and the prevailing plaintiffs' attorneys. 45 C.F.R. § 1610.4 (1997).

86. *See* cases cited *supra* notes 77-80, 82-84.

87. THE IMPACT FUND, 2003 ANNUAL REPORT 13-14 (2003), *available at* http://www.impactfund.org/publications/ImpactFund03AnnualReport.pdf.

88. *Id.* at 7-8, 14.

89. *Id.* at 3-5.

90. Dukes v. Wal-Mart Stores, Inc., No. C-01-2252 MJJ (N.D. Cal. June 3, 2001); Impact Fund, *Federal Judge Orders Wal-Mart Stores, Inc., the Nation's Largest Private Employer, To Stand Trial for Company-Wide Sex Discrimination* (June 22, 2004), *at* http://walmartclass.com/walmartclass94.pl?wsi=0&websys_screen=walmartclass_case

largest employment discrimination suit ever filed, the suit charges that Wal-Mart Stores deny female employees promotions, equal pay, favorable job assignments and training.[91]

While the potential for a cash settlement windfall is substantial, the drawbacks of relying heavily on these funds are clear. The Impact Fund's annual operating budget is less than $500,000, with the staff running a $125,000 deficit.[92] Individual grants typically range from $10,000 to $15,000, with a $25,000 maximum—insubstantial figures considering the costs of litigation today.[93] Thus, though highly effective and attractive, *cy pres* funds are scarce and difficult to rely on.

2. Fee Increase for Bar Dues to Pay for Legal Services to the Poor

The advantages of mandatory fee increases to fund legal services to the poor are significant. Fees provide a stable source of income, and encourage the profession to commit to the notion that a special obligation exists for lawyers to promote access to justice. However, there is concern that mandatory fees used to fund legal aid officers would be compelled speech. In *Keller v. State Bar*, the Supreme Court held that state bar dues used for political and ideological activities violate the First Amendment.[94] Thus, mandatory fees slated to go to legal aid may fall into the *Keller* trap. However, a constitutional analysis requiring heightened First Amendment scrutiny does not necessarily invalidate the state interest immediately.[95] Rather, it looks to see whether the state's interest is justifiable (or germane to the fees), and whether that interest is narrowly tailored so as not to unduly violate the First Amendment rights of those affected.[96]

On the issue of raising dues to fund legal aid offices, a court could go either way in its determination. Much depends on how the

developments.

91. THE IMPACT FUND, *supra* note 87, at 4.

92. *Id.*

93. THE IMPACT FUND, FREQUENTLY ASKED QUESTIONS, *at* http://www.impactfund.org/pages/faq.htm (last visited Jan. 5, 2004).

94. 496 U.S. 1 (1990) (ruling that those activities were not germane to the purpose of compulsory bar membership).

95. *Compare Id., and* United States v. United Foods, Inc., 533 U.S. 405, 412-14 (2001) (holding that a Secretary of Agriculture assessment imposed on unregulated mushroom growers to promote mushroom sales violated the First Amendment), *with* Morrow v. State Bar, 188 F.3d 1174, 1177 (9th Cir. 1999) (upholding mandatory State Bar dues as it relates to funding State Bar regulatory functions), *and* Glickman v. Wileman Bros. & Elliott, Inc., 521 U.S. 457, 469-70 (1997) (holding that compelling regulated tree fruit growers working as a cooperative to fund generic advertising required by marketing orders promulgated by the Secretary of Agriculture did not violate First Amendment rights).

96. *Keller*, 496 U.S. at 14.

court would answer the germaneness/justifiability prong of the question—is delivery of legal services to the poor part of the State Bar's statutory mission? *Keller* does not shed much light on this issue. On one hand, the Court likens the State Bar to a public-sector labor union,[97] which would limit the bar to incurring mandatory fees only for the purpose of performing the duties of an exclusive representative, i.e., disciplining members, regulating the legal profession, and maintaining or improving the quality of legal services.[98]

On the other hand, the Court refers to the State Bar's duties in the administration of justice,[99] implying that compulsory dues to provide for low-income legal services would in fact be a bona fide responsibility of the State Bar. Indeed, all of the professional rhetoric—the American Bar Association's pro bono mandate,[100] the State Bar of California's plea for equal access,[101] the Professional Rules of Ethics and Code of Conduct,[102] the etchings on the wall of the Supreme Court[103]—seems to support this principle. In 1926, William Howard Taft, the Chief Justice of the U.S. Supreme Court, said,

> [t]he Constitution and the procedure made inviolable by it do not practically work for the equal benefit of all. Something must be devised by which everyone, however lowly and however poor, however unable by his means to employ a lawyer . . . shall be furnished the opportunity to set the fixed machinery of justice going.[104]

Ultimately, as with most issues of constitutional implication, the question can only be resolved by the Court's own political and ideological compass. It is likely a court could, in a compromise, uphold the dues per se but order the State Bar to narrowly tailor its needs. This could bring us back to square one, as the State Bar

97. *Id.* at 9.

98. *See* Abood v. Detroit Bd. of Educ., 431 U.S. 209, 235-36 (1977) (holding that a union cannot spend mandatory funds on ideological causes not germane to its duties).

99. *Keller*, 496 U.S. at 5.

100. CAL. STATE BAR PRO BONO RESOLUTION (June 2002), *available at* http://calbar.ca.gov/calbar/pdfs/accessjustice/2003-Pro-Bono-Res.pdf.

101. CALIFORNIA COMM'N ON ACCESS TO JUSTICE, THE PATH TO EQUAL JUSTICE: A FIVE-YEAR STATUS REPORT ON ACCESS TO JUSTICE IN CALIFORNIA (October 2002), *available at* http://calbar.ca.gov/calbar/pdfs/accessjustice/2002-Access-Justice-Report.pdf.

102. THOMAS D. MORGAN & RONALD D. ROTUNDA, 2004 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY (Foundation Press 2004).

103. U.S. SUPREME COURT, SYMBOLS OF LAW: INFORMATION SHEET (May 2002), *available at* http://www.supremecourtus.gov/about/symbolsoflaw.pdf.

104. STATE BAR OF CAL., AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE IN CALIFORNIA 37 (Justice Earl Johnson, Jr. ed., 1996).

would likely impose restrictions similar to the LSC in its effort to narrowly tailor the use of those fees.

Aside from constitutional implications, raising bar dues may not be the most prudent approach for the State Bar. Dues are already expensive enough for lawyers not practicing in large firms. Increasing dues may marginalize struggling solo practitioners who, in a sense, do more to further equal access to the courts by their very existence than their dues ever will. Nonetheless, states have already begun exploring and instituting fee increases. In 1997, Minnesota became the first jurisdiction in the U.S. to institute an attorney registration fee increase to support legal services.[105] This change generated an estimated $850,000, which was administered by a court-appointed committee.[106] Ohio's Supreme Court increased the attorney registration fee by $50 in 1998, generating an additional $1.75 million.[107] Of that sum, $375,000 went to the IOLTA coffers.[108] The Ohio State Bar opposed the fee increase. They argued that providing civil legal services to the poor is a societal problem, and thus should be the problem of the legislature. It should not fall solely in the hands of lawyers. Their concern was that, unlike the integrated bars of other states, the Ohio State Bar is a voluntary organization. Thus, they were concerned that a fee increase would result in loss of membership.[109]

3. Value-Added Tax

Another promising source of revenue is a "sales tax" on legal fees, with the proceeds going to fund low-income legal services. Some countries, the Netherlands for example, already dedicate a portion of their value-added tax on private lawyers to government programs for the poor.[110] Hawaii, New Mexico, and South Dakota also levy a tax on legal fees, with the funds going to the general coffers of the legislature.[111] Many see this as a way for private-sector attorneys who do not wish to take on pro bono work to support equal justice. The revenue potential is enormous. In California alone, estimates range upwards of $160 million for a 1 percent tax on the gross receipts of in-state law firms.[112]

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105. MEREDITH MCBURNEY, ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, ABA PROJECT TO EXPAND RESOURCES FOR LEGAL SERVICES, INNOVATIVE FUNDRAISING IDEAS FOR LEGAL SERVICES §§ 1-10 (1998).

106. *Id.* at §§ 1-11.

107. *Id.*

108. *Id.*

109. *Id.*

110. STATE BAR OF CAL., *supra* note 104, at 59.

111. *Id.*

112. *Id.*

Not surprisingly, this idea has its share of detractors.[113] Private attorneys cite the loss of profitability and loss of business. Some firms would undoubtedly seek to relocate in tax-friendly states like Oregon or Washington. Large firms fear they would lose business to in-house counsel. Small firms and solo practitioners would wonder whether they could survive. Business advocates would claim that more transactional costs, let alone another tax, would spin the economy further down the abyss of a recession.

While the detractors have a point, the same argument can be made with respect to *all* taxes. Even a fraction of a one percent tax represents a sizeable chunk of desperately needed funds. Further, an economist can easily figure out at what point a little tax becomes too much. Regardless, the point may be moot. To date, at least in California, no legislator has seriously proposed a value-added tax on legal services.

4. Creating LMOs—HMOs for Legal Services

One delivery method that may foster popular middle-class support is a statewide prepaid legal insurance plan. Premiums could be charged on a sliding scale basis, with the state subsidizing the difference.

A program of this magnitude could have dramatic consequences, but arguably does nothing to help the legal aid attorney. There is no increase in revenue, and the state will have to provide an additional subsidy akin to Medi-Cal without any new revenue projections. Insurance companies, on the other hand, stand to profit dramatically.

The California State Bar made an unsuccessful attempt to establish a group dedicated to prepaid legal services over twenty years ago.[114] It failed due to lack of interest.[115] But as attorneys' billing rates increase, prepaid legal services are increasing in popularity.[116] A glance at the existing products clearly shows a need for the State Bar to provide guidance and regulation with respect to legal service insurance products.[117] In fact, it remains to be determined by the courts whether prepaid legal services offered

113. *Id.* (noting that attorneys in Massachusetts brought a lawsuit against the tax for loss of profitability and loss of business).

114. *Id.* at 50.

115. *Id.*

116. This is evident in the ABA's revised Model Rules governing an attorney's direct contact with prospective clients, which allows a lawyer to participate in a prepaid legal services plan to solicit clients. MODEL RULES OF PROF'L CONDUCT R. 7.3 (2002).

117. *See generally* Prepaid Legal Services, Inc., *at* http://www.prepaidlegal.com (last visited Dec. 28, 2004).

today are nothing more than a pyramid scheme.[118]

5. Finding God

It is well documented that most charitable contributions go to churches and religious organizations.[119] A legal aid agency may be able to tap into that funding pool by integrating its services with traditional functions of the religious community, which could yield more than just monetary benefits. Church affiliation provides a critical mass of volunteer support, staff, and outreach. For what it's worth, an added benefit, at least in California, is that the Attorney General has only limited oversight functions over religious corporations.[120] Although the Attorney General may sue for a court determination that a corporation is not properly qualified or classified as a religious corporation, a legitimate religious corporation such as Glide Memorial Church[121] should have no trouble maintaining that classification even if it does integrate legal services into its array of programs.

Of greater appeal is the idea that legal services should co-exist with programs such as shelters, family counseling, community education, children services, domestic abuse prevention, and other programs traditionally associated with churches. A one-stop clinic where a client can address all her concerns, not just the legal ones, gives the lawyer a better snapshot to make a fuller assessment of a client's situation.

Utilizing the churches may have its drawbacks. Clients may be less inclined to seek legal help because of religious differences, or may avoid using the church-based services because they do not wish to be subject to proselytization.[122] Lawyers may also not be as independent from the church as they would like, and conflicts of interest may arise between the church, a client, and the attorney.

However, the programs already in existence seem to work well.

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118. *See* In re Pre-Paid Legal Services, Inc. Litigation II, CIV-02-273-C (W.D. Okla. Mar. 2002).

119. A 2002 study by the Congressional Budget Office showed that, in 1995, 61 percent of itemized and nonitemized charitable contributions went to religious organizations, compared with 8 percent for health and 9 percent for education. CONG. BUDGET OFFICE, EFFECTS OF ALLOWING NONITEMIZERS TO DEDUCT CHARITABLE CONTRIBUTIONS (2002), *at* http://www.cbo.gov/showdoc.cfm?index=4008&sequence=0.

120. CAL. CORP. CODE § 9230(a)-(c) (2001).

121. For more information on Glide Memorial Church, see http://www.glide.org (last visited Dec. 28, 2004).

122. This is not to say that all church-based charities proselytize. However, proselytizing is widespread in institutions such as jails and prisons. *See, e.g.*, Samantha M. Shapiro, *Jails for Jesus: President Bush Wants Faith-Based Programs To Take Over Social Services. But What Happens When Evangelical Christians Try Their Hand at Running Prisons?*, MOTHER JONES, Nov. 1, 2003, at 54.

The Volunteer Legal Services Program, Lawyers' Committee for Civil Rights, and Bay Area Legal Aid all work closely with Catholic Charities on housing and domestic violence prevention issues. For example, Catholic Charities, through its Season of Sharing fund, will pay the overdue rent of tenants being evicted for nonpayment, subject to certain restrictions. This gives added leverage to the legal aid attorney at the mandatory settlement conference, and those nonpayment cases often are resolved amicably.[123]

An example of a more direct relationship between the church and legal aid is the Chicago Legal Clinic (CLC).[124] The CLC works seamlessly with Catholic churches around the depressed South side (it helps that its co-founder is a priest).[125] The CLC has a Violence Against Women Prevention Clinic funded entirely by a church.[126] In-kind services include rent space and support staff.[127]

A similar arrangement is being attempted in San Francisco. The Reverend Cecil William's Glide Memorial Church has begun to collaborate with HAP to provide a satellite legal office on church premises. To date, Williams has agreed to provide desk space with a computer and modem, to be used for a biweekly legal walk-in clinic.[128]

6. Expand Services and Apply for Non-LSC Federal Funds

Ironically, choosing to forego LSC funds serves as an invitation for the legal aid agency to expand its services. As services expand, the agency may become eligible for federal grants offered by other agencies. For example, the Department of Housing and Urban Development (HUD) provides grants to programs working on housing issues and homelessness.[129] HUD also administers Housing for People with AIDS (HOPWA) grants.[130] These funds can be used to bring disability discrimination suits against landlords refusing to

123. In fact, in all three nonpayment cases I have argued, the landlords seeking to evict their tenants were compelled to dismiss their actions when Catholic Charities got involved.

124. Telephone Interview with Ed Grossman, Executive Director, Chicago Legal Clinic (Apr. 29, 2002).

125. *Id.*

126. *Id.*

127. *Id.*

128. Interview with Teresa Friend, *supra* note 73.

129. U.S. DEP'T OF HOUS. AND URBAN DEV., HUD GRANT PROGRAMS, *at* http://www.hud.gov/grants/index.html (last updated Jan. 6, 2004).

130. CMTY. PLANNING AND DEV., U.S. DEP'T OF HOUS. AND URBAN DEV., HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS (HOWPA) PROGRAM, *at* http://www.hud.gov/offices/cpd/aidshousing/programs/index.cfm (last visited Oct. 6, 2004).

rent to or harassing HIV-positive tenants. In addition, the Justice Department offers Violence Against Women Act (VAWA) and Victims of Crime Act (VOCA) grants that can be used to staff restraining order clinics and counseling services.[131]

Necessitated by the need to cast a broader net to gain funding, legal service providers are expanding their programs into non-legal arenas. By doing so, the lawyers in these programs help to foster a clearer vision of how a holistic law practice and collaborative lawyering can work.

III. Reshaping Legal Aid Toward "Holistic" Services and Collaborative Lawyering

> "Helplessness does not stem from the absence of theoretical rights. It can stem from an inability to assert real rights."
>
> - U.S. Attorney General Robert F. Kennedy, 1964.[132]

Much of the crisis concerning legal funding can be traced to an internal debate lingering in the minds of civic-minded lawyers: just what is our role in combating poverty? Is a lawyer's duty merely about access to the courts, or is it something more? Is it a lawyer's duty to improve the overall situation of the poor? If so, providing access to the courts is simply not enough. Legal scholars have criticized the traditional equal access to justice movement as not what the poor want or need.[133] Merely using the courts does little to improve the overall status of the poor. It only makes them dependent on lawyers and leaves them further alienated.[134] Indeed, recent poverty-law literature highlights the subtle yet counterproductive impact of litigation strategies on a client's long-term well-being.[135]

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131. U.S. DEP'T OF JUSTICE, OFFICE FOR VICTIMS OF CRIME, VICTIMS OF CRIME ACT PROGRAMS, *at* http://www.ojp.usdoj.gov/ovc/fund/welcome.html (last visited Sept. 29, 2004).

132. United States Attorney General Robert F. Kennedy, Law Day Speech (May 1, 1964), *at* http://www.equaljusticeupdate.org/quotations3.htm.

133. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970); *see also* Susan S. Bowyer, *Symposium: New Approaches to Poverty Law, Teaching, and Practice: Challenging Legal Culture from Classroom to Practice: A Case Study of New College's Politics of Law Practice Course*, 4 B.U. PUB. INT. L.J. 363 (1995).

134. Wexler, *supra* note 133, at 1053; *see also* Peter Gabel & Duncan Kennedy, *Critical Legal Studies Symposium: Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984).

135. *See, e.g.*, Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2139 (1991); *see also* GERALD LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Wes Daniels, *"Derelicts," Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images*

Implicit in scholastic critique is the acknowledgment that lawyers do have a duty to be more proactive in combating poverty. If this is true, lawyers should practice with a holistic and collaborative vision involving the community, encouraging community participation in decision-making and developing non-hierarchical partnerships with clients. After all, as Kurt Vonnegut once noted, "[C]ommunities are all that is substantial about what we create or defend or maintain in this world. All the rest is hoop-la."[136]

One example of how a holistic and collaborative law practice[137] can work is the San Francisco Tenants' Union (SFTU). Comprised of tenants and tenant attorneys engaging in grassroots political and community organizing, its mission is to teach "self-help and lay lawyering."[138] The tenants were able to help themselves in the 1998 district elections by getting on the ballot, and passing, a countywide measure placing a moratorium on certain types of evictions.[139] Another example of this "multi-dimensional"[140] lawyering is the Asian Law Alliance (Alliance) in San Jose, California. Developed on the premise that "progressive lawyers are community activists with legal training,"[141] the role of the lawyer in the Alliance's mission is more akin to an educator than to a legal advocate. The Alliance conducts English-as-a-Second-Language workshops for recent immigrants, offers vocational classes, and seeks to bridge the

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of Homeless Litigants and Implications for Legal Advocates, 45 BUFF. L. REV. 687 (1997) (arguing that lawyers need to look beyond traditional litigation and instead work in concert with their clients to find alternative solutions); Anita Hodgkiss, Note, *Petitioning and the Empowerment Theory of Practice*, 96 YALE L.J. 569 (1987) (arguing that lawyers should advocate political action).

136. Kurt Vonnegut, Address at the Rice University Commencement Ceremonies (May 9, 1998), *at* http://www.vonnegutweb.com/vonnegutia/commencement/rice.html.

137. Not to be confused with "collaborative lawyering" in the mediation context, where opposing lawyers agree never to represent their respective clients in litigation as an act of good-faith to settle their matters in a timely and economical manner.

138. LOPEZ, *supra* note 135, at 70.

139. SAN FRANCISCO, CAL., PROPOSITION G, NO. 237-99 (1999) (prohibiting owner move-in evictions against the elderly and disabled).

140. *See* Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 538 (1987-88). White analyzes activist lawyering as follows: "one-dimensional" lawyer reflects the LSC ideology, heavily grounded in the assumption that the courts are the only forum for remedying injustice. *Id.* "Two-dimensional" lawyers are those who use the legal system to increase public awareness of injustice. *Id.* "Three-dimensional" lawyers do not aim to change society's view about the poor—they develop political agenda and consciousness among the poor themselves. *Id.* Three dimensional lawyers teach people how to think in ways that will lead to collective action. *Id.*

141. Angelo N. Ancheta, *Community Lawyering*, 1 ASIAN L.J. 189, 210 (1994) (reviewing LOPEZ, *supra* note 135).

cultural gap between the Western legal system and South Asian cultural values.[142]

Another recognized holistic law practice is the Bar Association of San Francisco's Volunteer Legal Services Program (VLSP). As the city's most comprehensive legal services program, it provides social and psychological services to its clients who initially come in for legal assistance.[143] To VLSP, providing legal services is just a web to catch a client's underlying social or psychological problems. VLSP operates a consumer rights and bankruptcy clinic, a restraining order clinic, a disability benefits project, a monthly drop-in legal clinic, and an asylum project.[144] VLSP also provides business and legal assistance to nonprofits in San Francisco.[145] In addition, it works closely with transitional housing programs for the mentally disabled, and staffs HAP, a homeless advocacy comprehensive needs office.[146] During the late 1990s, it created the Legal Employment Action Program (LEAP) in response to welfare-to-work reform laws.[147] Working in collaboration with various private law firms, LEAP provided job training and placement to qualified single mothers.[148] LEAP offered three months of vocational training, followed by guaranteed placement with private law firms or corporations.[149] To date, more than fifty women, many of whom never graduated from high school, have gone on to embark on careers involving legal support.[150] Most of the participants were former clients seeking legal assistance.[151]

All the aforementioned programs—the SFTU, the Alliance, and VLSP—never once received a penny of LSC funds. Yet their approaches, each unique in its own way, have made positive long-term changes in the communities they seek to serve. Unfortunately, current LSC grantees are prevented from implementing their own innovative programs, as they remain tangled in a regulatory quagmire. Thus, the LSC restrictions and budget cuts should come as a blessing in disguise. They force the LSC recipient to conjure up alternative funding schemes. In so doing, an organization can change organically from being litigation-minded and adversarial-driven to become proactive, collaborative and holistic in its practice.

142. *Id.*
143. VOLUNTEER LEGAL SERVS. PROGRAM, INC., 2000 ANNUAL REPORT 2 (2001).
144. *Id.* at 3-11.
145. *Id.*
146. *Id.* at 7.
147. *Id.* at 10.
148. *Id.*
149. Interview with Lily McGuiness, LEAP Coordinator, Volunteer Legal Services Program, in San Francisco, Cal. (Apr. 7, 2002).
150. *Id.*
151. *Id.*

Conclusion

Working around the funding restrictions gives the legal aid attorney a chance to reach out to other allies, such as social workers, educators, the clergy, and private practitioners. In the introduction, I mentioned in passing the private bar's adoption of their clients' mantra of maximizing profits. Aside from giving the legal aid attorney an incentive to break from the shackles of the LSC, the crisis in funding restrictions also serves as an opportunity for the legal profession, as a whole, to become reacquainted with its more noble mission – the very source of its legitimacy.

The disparity between rich and poor is reinforced whenever the rich are able to choose a white-shoe firm while the poor are forced to go to an overcrowded intake line at the legal services office.[152] Moreover, the uninsured middle-class is left in between the trenches, caught in a Catch-22 between not being able to afford a competent attorney and not qualifying for legal aid.[153] These disparities emphasize subordination by economic class, a concept that is not supposed to exist in our legal system but is impossible to ignore.

Detractors may point out that LSC recipients already do too much, and that such restrictions are necessary to ensure that government funds are not used to further political ideologies. They may also point out that two trends related to assisting *pro per* litigants provide adequate access for those who fall through the cracks created by the LSC's income and substantive restrictions. Those trends involve limited scope representation, also known as "unbundling,"[154] and self-help centers[155] sponsored by the courts

152. Andrea J. Saltzman, *Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System*, 34 HASTINGS L.J. 1165, 1174 (1983) (noting that representation by private attorneys minimizes the stigmatization of the poor, for they are not sent to separate but equal law offices or subjected to a different brand of justice than the rich).

153. Note that under LSC eligibility guidelines, recipients may only serve clients who are earning below 125 percent of the poverty level. 45 C.F.R. § 1611.3(b) (2004).

154. "Unbundling" is the practice of allowing the client to allocate the division of discrete lawyering tasks rather than having the lawyer engage in a full-service arrangement. For the client, this means lower fees and more control. For the lawyer, this means serving more as a coach than as a full advocate. *See generally* FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES 1-12 (2000).

155. Since 2002, the San Francisco Superior Court has provided *pro per* litigants with an ACCESS Center (Assisting Court Customers with Educational Services and Self-Help Services) and FLASH (Family Law Assistance and Self-Help). *See* Nancy McCarthy, *Plan To Help Unrepresented Litigants Sparks Board Debate*, CAL. B.J., Jan. 2004, at 1, 18.

and bar associations. But both of these plans are deficient in one major respect—the litigants do not have access to a lawyer providing full service representation. Thus, they remain on unequal terms. Moreover, these programs ignore the preventive efforts that a holistic and collaborative law practice has to offer.

When individuals are represented on equal terms, however, representation becomes more than a token gesture by the legal profession. It becomes an articulation of a commitment to equal justice under the law, a principle central to our jurisprudence. Thus, the LSC's failure to live up to its mission is a golden opportunity for legal services organizations to seek other viable funding alternatives as well as to re-evaluate how the legal profession should aid the poor. I hope this article demonstrates that the two are not mutually exclusive.

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